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# Message Text

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PAGE 01 BONN 11544 01 OF 02 131722Z

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ACTION EB-11

INFO OCT-01 EUR-25 ADP-00 COME-00 TRSE-00 L-03 CIAE-00

INR-10 NSAE-00 RSC-01 JUSE-00 EA-11 STR-08 TAR-02

OMB-01 SS-15 NSC-10 FTC-01 RSR-01 /100 W
---------- 074430
R 131706Z AUG 73
FM AMEMBASSY BONN
TO SECSTATE WASHDC 6816
INFO USMISSION EC BRUSSELS

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E.O. 11652: N/A
TAGS: ETRD, GW, , OECD
SUBJECT: ANTITRUST CASE U.S. V. IBM

REF: A. STATE 69913,B. STUTTGART 0070, C. BONN 9968
D. EC BRUSSELS A-148

1. THE FOLLOWING INFORMATION IS KEYED TO PARAS OF
REFTEL A.

2. THE WORLD TRADERS DATA REPORT (WTDR), CONTAINED
REFTEL B, PROVIDES PERTINENT DATA ON CORPORATE ORGANIZA-
TION OF IBM DEUTSCHLAND GMBH.

3. INFORMATION ON TOTAL COMPUTER MARKET FOR GERMANY IS
CONTAINED IN THE "INTERNATIONAL MARKET SURVEY ON COM-
PUTERS AND COMPUTER RELATED EQUIPMENT" (1972), PREPARED
FOR THE US DEPARTMENT OF COMMERCE BY DIEBOLD DEUTSCHLAND
GMBH. (WE ASSUME COUNTRY MARKETING MANAGER FOR GERMANY,
COMMERCE/BIC/OIM CAN MAKE COPY AVAILABLE TO JUSTICE.)
APPENDIX 1, SECTION III OF THE DIEBOLD STUDY INDICATES
THAT IBM'S PRINCIPAL COMPETITORS IN GERMANY ARE
HONEYWELL-BULL (US), UNIVAC (US) AND SIEMENS (GER).
ALSO OF CONSIDERABLE SIGNIFICANCE IS A REPORT, CONTAINED
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PAGE 02 BONN 11544 01 OF 02 131722Z

REFTEL C, THAT A NEW COMPUTER MARKETING FIRM, UNIDATA,

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

HAS BEEN ESTABLISHED TO DISTRIBUTE DATA PROCESSING EQUIPMENT OF SIEMENS, N.V. PHILLIPS (NETHERLANDS) AND COMPAGNIE INTERNATIONALE POUR L'INFORMATIQUE (CII-FRANCE). UNIDATA, CONTROLLED EQUALLY BY THE ABOVE THREE COMPANIES, WAS FORMED IN AN ATTEMPT TO COUNTERACT US DOMINANCE IN THE EUROPEAN COMPUTER MARKET AND AS A MEANS TO DEAL WITH A GROWING JAPANESE CHALLENGE. APPENDIX 1, SECTION III PROVIDES STATISTICAL DATA WHICH PERMITS DETERMINATION OF MANUFACTURER'S SHARES OF THE MARKET. A RELEVANT HISTORY OF IBM'S MAJOR GERMAN-OWNED COMPETITOR SIEMENS IS CONTAINED IN THE DIEBOLD STUDY AT SECTION IV B 1. IN BRIEF, SIEMENS TERMINATED RELATIONSHIP WITH RCA AFTER MANY YEARS WHEN THE LATTER DISCONTINUED ACTIVITIES IN THE AREA OF COMMERCIAL DATA PROCESSING IN SEPTEMBER 1971. SINCE THAT TIME BUSINESS IN COMPUTER EUIPMENT HAS CONTINUED VERY FAVORABLY, WITH SIEMENS ESTIMATING ITS GERMAN MARKET SHARE AT FROM 16-20 PER CENT, AS OPPOSED TO AN ESTIMATED IBM MARKET SHARE OF 60 PER CENT.

4. IMPORTS OF COMPUTERS AND PERIPHERAL EQUIPMENT INTO GERMANY ARE SUMMARIZED FOR 1970-1973 IN THE DIEBOLD STUDY, SECTION II A 5. THEY INDICATE THAT THE PRINCIPAL FOREIQN SUPPLIERS, IN ADDITION TO THE US, ARE FRANCE, ITALV, GREAT BRITAIN AND THE NETHERLANDS. TOTAL ESTIMATED IMOORTS ROSE FROM 1.601 BILLION DM FOR 1970 TO 2.009 BILLION DM FOR 1972. THE DIEBOLD STUDY DOES NOT COVER EXPORTS. BASED UPON FIGURES PUBLISHED BY THE FEDERAL STATISTICAL OFFICE, EXPORTS OF COMPUTERS AND PERIPHERALS FROM GERMANY IN 1972 WERE PROBABLY IN THE AREA OF 1.457 BILLION DM. THE PRINCIPAL COUNTRIES OF DESTINATION WERE AGAIN TRADING PARTNERS IN THE EC, IN PARTICULAR: FRANCE, ITALY, GREAT BRITAIN AND THE BENELUX COUNTRIES. AUSTRIA, SPAIN, SWITZERLAND, SWEDEN, AUSTRALIA AND BRAZIL WERE ALSO SIGNIFICANT COUNTRIES OF DESTINATION. THE US, HOWEVER, WAS NOT A SIGNIFICANT USER OF GERMAN EXPORTS. CONCERNING CUSTOMS DUTIES APPLICABLE TO COMPUTER EQUIPMENT, THE BASIC RATE FOR EQUIPMENT FROM THE US AND OTHER "THIRD" COUNTRIES IS 7 PER CENT AD VALOREM. THIS RATE IS COMMON TO ALL MEMBERS OF LIMITED OFFICIAL USE



THE EC FOR IMPORTS COMING FROM COUNTRIES OUTSIDE THE COMMUNITY. A ZERO RATE APPLIES OF COURSE AMONG THE MEMBERS OF THE EC. CERTAIN OTHER ARRANGEMENTS APPLY TO THE NEW MEMBERS ON A TRANSITIONAL BASIS, TO ASSOCIATE MEMBERS AND TO SOME FAVORED COUNTRIES. (SEE THE DIEBOLD STUDY, SECTION V B 1, FOR DETAILS.) CONCERNING NON-TARIFF BARRIERS, THERE IS AN IMPORT TURNOVER TAX OF 11 PER CENT WHICH IS LEVIED ON ALL FOREIGN EQUIPMENT,

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

INCLUDING THAT COMING IN FROM EC MEMBERS OR FAVORED NATIONS. THIS IS CONSIDERED TO BE IN LIEU OF THE ADDED-VALUE TAX WHICH DOMESTIC PRODUCTS ARE SUBJECT TO AND IS INTENDED TO COMPENSATE FOR THE DISADVANTAGE TO DOMESTIC MANUFACTURERS WHICH WOULD OTHERWISE ARISE.

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OMB-01 SS-15 NSC-10 FTC-01 RSR-01 /100 W
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LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 11544

5. WE HAVE NO DIRECT EVIDENCE OF FRG DISCRIMINATION IN FAVOR OF GERMAN OR NON-U.S. SUPPLIERS OF COMPUTER EQUIPMENT. UP TO THE PRESENT TIME, IBM DEUTSCHLAND HAS BEEN REGARDED AS A GERMAN FIRM SO THERE WOULD HAVE BEEN NO QUESTION OF DISCRIMINATION. HOWEVER, EVEN AMERICAN COMPUTER FIRMS SUCH AS CDC WHICH HAVE NO SIGNIFICANT MANUFACTURING PRESENCE IN GERMANY HAVE SOLD EQUIPMENT FOR USE BY THE FRG GOVERNMENT AGENCIES. THERE IS A MOVEMENT UNDERWAY IN THE EUROPEAN COMMUNITY (REF D) TO HARMONIZE COMPUTER INDUSTRY OBJECTIVES. NO DOUBT IN THE FUTURE THERE WILL BE STRONG PRESSURE ON THE FRG TO ADHERE TO A COMMON EC POLICY OF WHICH TWO KEY ELEMENTS NO DOUBT WILL BE SUPPORT FOR EC MANUFACTURERS AND "BUY EC". WHETHER THE FRG WILL IN FACT ADOPT SUCH A

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

Declassified/Released US Department of State EO Systematic Review 30 JUN 2005

POLICY IS ANOTHER QUESTION. AT PRESENT, THE IBM RECORD OF A 50 PER CENT PLUS SHARE OF THE GERMAN GOVERNMENT MARKET PLUS MISCELLANEOUS SALES OF MAIN FRAME AND PERIPHERAL EQUIPMENT BY OTHER AMERICAN MANU-FACTURERS, SUPPORTS THE THESIS THAT THE GOVERNMENT HAS A LIBERAL PROCUREMENT POLICY. THE GERMAN GOVERNMENT DOES UNDERWRITE A SUBSTANTIAL R&D PROGRAM IN SUPPORT
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OF THE DOMESTIC COMPUTER INDUSTRY, WHICH IS DETAILED IN THE DIEBOLD STUDY, SECTION IV B 5.

6. DUE TO THE RESTRICTIONS PLACED UPON THIS INVESTIGA-TION IN PARA 1, REFTEL A, WE ARE NOT ABLE TO DETERMINE WITH ANY DEGREE OF CERTITUDE WHAT THE LOCAL REACTIONS TO THE ANTITRUST CASE AGAINST IBM HAVE BEEN, NOR CAN WE READILY STATE WHETHER DEVELOPMENTS IN THIS CASE HAVE HAD ANY EFFECT ON GOVERNMENT POLICIES CONCERNING COM-PUTERS. TO OUR KNOWLEDGE, NO ACTION HAS EVER BEEN TAKEN OR PROPOSED AGAINST IBM UNDER NATIONAL LAWS CONCERNING COMPETITION OR RESTRICTIVE BUSINESS PRAC-TICES, ALTHOUGH THE TOOLS TO DO THIS APPEAR TO EXIST UNDER THE PROVISIONS OF THE GERMAN CARTEL LAW (LAW AGAINST RESTRAINTS OF COMPETITION). WE BELIEVE THE GERMAN GOVERNMENT WOULD PREFER TO GO THE INDIRECT EC POLICY ROUTE, I.E., MERGER AND STRENGTHENING OF EC MANUFACTURERS TO PROVIDE A VIABLE ALTERNATIVE TO IBM'S DOMINANCE, RATHER THAN A LEGAL CONFRONTATION. THE FORMATION OF UNIDATA, REPORTED ABOVE, IS A STEP IN THIS DIRECTION. FURTHER BACKGROUND WILL BE FOUND IN REF D, THE REPORT ON THE EC COMMISSION DRAFT MEMORANDUM ON COMPUTER POLICY. AS THE AIRGRAM COMMENTS INDICATE, THE MEMORANDUM STRESSES THE NEED FOR GREATER "EQUILI-BRIUM" IN THE COMPUTER SECTOR, BUT IT DOES NOT ADVOCATE USE OF THE EC COMPETITION POLICY AGAINST ENTERPRISES ALREADY ESTABLISHED.

7. AGAIN DUE TO THE RESTRICTIONS PLACED UPON THIS IN-VESTIGATION, WE CANNOT USEFULLY SPECULATE ON THE LIKE-LY EFFECT ON THE LOCAL MARKET OF A BREAKUP OF IBM AND RELATED QUESTIONS.

8. WHETHER DERIVATIVE SUITS COULD BE BROUGHT AGAINST IBM UNDER LOCAL GERMAN LAW, SHOULD U.S. IBM BE SUCCESS-FULLY SUED FOR DAMAGES ON THE BASIS OF A COURT FINDING THAT IT HAS MONOPOLIZED THE INDUSTRY, WE HAVE MADE IN-FORMAL INQUIRIES AND HOPE TO BE ABLE TO TRANSMIT COMMENTS IN THE NEAR FUTURE.

9. INFORMATION CONTAINED IN PARAS 2 THROUGH 4 ABOVE

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AND IN THE DIEBOLD STUDY IS UNCLASSIFIED AND MAY BE MADE PART OF THE PUBLIC RECORD OF THE UNITED STATES. INFORMATION CONTAINED IN PARAS 5 THROUGH 8 ABOVE IS CLASSIFIED AND MAY NOT BE MADE PART OF THE PUBLIC RECORD IN THE UNITED STATES.
CASH

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